

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ANDREW THOMAS,

Petitioner,

v.

WAYNE CARPENTER, Warden,

Respondent.

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Case No. 2:12-2333-JPM

**JOINT MOTION TO ALLOW PARTIES TO EXCEED PAGE LIMITATIONS AND TO
WAIVE STATEMENT OF FACTS**

The respondent respectfully request that this Court waive Local Rule 56.1(a) regarding page limitation for his summary judgment motion, the response thereto, and requiring a statement of fact in connection with those same filings. The petitioner joins in this motion and requests the same relief. As grounds therefore, the respondent states that in this capital case, compliance with page limitations is not possible given the number of issues raised in the petitioner's challenge to his conviction and sentence, and that his supporting memorandum is tailored to be as brief as possible.

The respondent also states that the preparation of a separate statement of facts is unnecessary because the state court's factual findings are entitled to deference, and the scope of review is limited to review of the state court's determination on the merits of the claims based on the record before it as to those claims litigated in state court. 28 U.S.C. § 2254(e). The State Court record has been filed with this Court, and respondent's memorandum cites the relevant state-court findings and contains specific citations to the portions relevant to disposition of the

motion, as well as to the additional discovery deposition authorized by this Court. Thus, the respondent respectfully suggests that a statement of facts is not necessary in this matter.

WHEREFORE, the parties request that this Court waive local rule 56.1(a) limiting the summary judgment memorandum and the response thereto to 20 pages and requiring a separate statement of material facts.

Respectfully submitted,

/s/ Andrew Hamilton Smith
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/s/ Robert Hutton
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(w/ permission)

CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(b) the undersigned counsel consulted with counsel Robert Hutton who consents, to and joins in, this motion.

Respectfully submitted,

/s/ Andrew Hamilton Smith
ANDREW HAMILTON SMITH
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Summary Judgment has been filed with the Court's electronic filing system, which will forward a copy of the same to the petitioner's counsels: Robert Hutton, Glankler Brown, PLLC, 6000 Poplar Ave. Ste 400, Memphis TN 38119, and Thomas Lane, Winston & Strawn, LLP, 200 Park Ave. New York, NY 10166, on the 16th day of April, 2014.

/s/ Andrew Hamilton Smith
ANDREW HAMILTON SMITH